REMARKS

The Office Action of November 1, 2005, has been carefully reviewed, and in view of the above amendments and the following remarks, reconsideration and allowance of the pending claims are respectfully requested.

Applicant gratefully acknowledges the allowance of claims 12-22.

In the above Office Action, claims 1, 3, 5-9 and 22 were rejected under 35 U.S.C. § 102(b) as being anticipated by *Recker* (U.S. Patent No. 2,210,178) and claims 3, 10, and 11 were rejected under 35 U.S.C. § 103 as being unpatentable over *Recker*. Applicant notes the cover sheet indication rejecting claims 1, 3-11 and 22, yet the detailed action fails to set forth a rejection of claim 4. It is assumed that above indication of unpatentability under Section 103 is supposed to apply to claim 4 rather than claim 3, yet the Examiner is kindly requested to clarify this matter in the next official action.

As set forth above, claim 1 has been amended to include the limitation of claim 10, which was rejected under Section 103 as being unpatentable over *Recker*. Claim 1 thus recites a first curved conduit and a second curved conduit coupled together so as to define a substantially continuous flow path; a first coupling for attaching a first end of the first curved conduit to the mechanical circulatory device and a second coupling for attaching a second end of the first curved conduit to a first end of the second curved conduit, wherein the first and second curved conduits are rigid so as to maintain a predetermined orientation when said first coupling and said second coupling are disposed in the fixed positions, and wherein said conduit defines a conduit

for conducting blood between a patient and a ventricular assist device.

The claimed invention achieves an increased degree of adjustability for positioning the conduit assembly due to the combination of the first and second rigid, curved conduits and the recited first and second couplings. See, e.g. page 3, paragraphs [0008] and [0009]; page 6, paragraph [0020]; page 7, paragraph [0022], and page 8, paragraph [0023], of the current specification.

The Examiner has taken the position that the conduits taught by *Recker* are fully capable of conducting blood therethrough, and thus render the claimed invention unpatentable. For at least the following reasons, Applicant respectfully traverses this rejection.

The prior art upon which the Examiner relies, *Recker*, is directed to a plumbing fixture for draining water from a lavatory bowl. The claimed invention is directed to a conduit assembly for attachment to a mechanical circulatory device. By definition, such a device is a medical component to assist patients with heart conditions. The differences between the fields of invention in this case are significant as, while one may lead to a water puddle on a floor, failure of the other can be fatal to the patient. Accordingly, Applicant submits that the cited prior art, *Recker*, is nonanalogous prior art and as such, cannot render the claimed invention unpatentable.

As held by the Federal Circuit, the examiner must determine what is "analogous prior art" for the purpose of analyzing the obviousness of the subject matter at issue. "In order to rely on a reference as a basis for rejection of an applicant's invention, the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular

problem with which the inventor was concerned." *In re Oetiker*, 977 F.2d 1443, 1446, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992).

As described in the specification, the applicant's objective in the present case was to provide greater adjustability of the inflow conduit which extends from the VAD to interior to the ventricular wall of the heart and/or the outflow conduit which conveys blood from the VAD to the ascending thoracic aorta, so as to enable better orientation and positioning of an implantable VAD or other mechanical circulatory device. Applicant submits that a plumbing fixture for a lavatory bowl is not within the field of applicant's endeavor.

Moreover, Applicant submits the slip-joint connection disclosed in *Recker* is not pertinent to the adjustability in orientation and positioning of the inflow conduit extending from a VAD as claimed in the present application. Since *Recker* is for a sink drain, there is no adjustability in the orientation and positioning of the outflow from the sink drain other than in the transverse plane. In other words, the drain from the sink is generally vertical and the outflow following the trap is always at a ninety degree angle thereto. Thus, the adjustability in orientation and positioning sought by the applicant in the present case would not be gleaned from the disclosure in *Recker*. *Recker* in fact does not even discuss the adjustability of the slip-joint connection but rather, merely states that it is a "better and more securely fastened slip joint." *Recker* seeks to reduce the time, labor and material costs in the manufacture of the female tubular members of slip joint connections employed in plumbing fixtures. Col 1, lines 39-43. *Recker* also seeks to provide an improved slip

joint construction for plumbing fixtures whereby a more effective slip joint connection may be formed between telescopically-interfitted male and female tubular members constructed of seamless drawn tubing by providing a gasket chamber to enhance the interlocking effect of an axially compressible and transversely expandable gasket. Col. 1, line 51- Col. 2, line 6. These teachings of *Recker* are not pertinent to the Applicant's endeavor in the presently claimed invention.

The Federal Circuit has also stated that the issue of whether a person of ordinary skill would reasonably have consulted references in another field of art to solve a problem necessarily involves subjective aspects, common sense (In re Oetiker, 977 F.2d. 1443, 1447 (Fed. Cir.1992)) and a consideration of "the reality of the circumstances." In re Wood, 599 F.2d 1032, 1036 (C.C.P.A.1979). Thus, a reference that is neither within the inventor's field of endeavor, nor reasonably pertinent to the problem being solved by the inventor, is nonanalogous art and is not eligible to provide a suggestion for the claimed invention. In re Clay, 966 F.2d 656, 658 (Fed. Cir. 1992).

Accordingly, Applicant submits *Recker* is nonanalogous art and cannot render the claimed invention obvious.

CONCLUSION

In view of the above amendments and remarks, Applicant respectfully submits that the claims of the present application are now in condition for allowance, and an early indication of the same is earnestly solicited.

Should any questions arise in connection with this application or should the Examiner believe that a telephone conference would be helpful in resolving any remaining issues pertaining to this application; the Examiner is kindly invited to call the undersigned counsel for Applicant regarding the same.

Respectfully submitted,

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